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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 745

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, ETC., ET AL.,

Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONERS' REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION

BURKE WILLIAMSON,
JACK A. WILLIAMSON,
39 South La Salle Street,
Chicago 3, Illinois,
Attorneys for Petitioners.

HAROLD WILKINSON,
1120 Merchants National Bank Building,
Cedar Rapids, Iowa,
Of Counsel.

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The respondent attempts to persuade the Court that the petitioners seek certiorari merely to review *findings of fact* made by the lower courts. The respondent thus states the QUESTION PRESENTED, at page 2 of its brief:

> "Should this Court grant certiorari to review the concurrent findings of fact made by the District Court and the Court of Appeals that the dispute over which a strike was threatened is a 'minor dispute', one subject to compulsory arbitration procedures under the Railway Labor Act and to binding decision by the National Railroad Adjustment Board?"

At page 4 of its brief the respondent thus begins its REASONS FOR DENYING THE WRIT:

> "Petitioners are merely asking this Court to review facts. We respectfully suggest that this Petition falls within the purview of the language in the case of *Graver Mfg. Co. v. Linde Co.*, 336 U. S. 271, p. 275, which indicates that this Court should not undertake to review concurrent findings of fact by two courts below in the absence of very obvious and exceptional showing of error."

The District Court did *not* make a finding of fact that the dispute over which a strike was threatened is a "minor dispute" (FINDINGS OF FACT made by the District Court (pp. 89-96 of the Appendix in the Court of Appeals and filed herein). In its CONCLUSIONS OF LAW the District Court held that the dispute involved in the Section 6 notice was a major dispute under the Railway Labor Act and that the carrier on November 18, 1960, accepted the proposal for a rule change submitted to it by the Union, and that thereafter this agreement became a part of the collective bargaining agreement between the parties (Appendix in the Court of Appeals, p. 97). In the District Court's INJUNCTION ORDER which followed the Court found, again, that the carrier on November 18, 1960, accepted the proposal for a rule change and that thereafter this agreement became a part of the collective bargaining agreement between the parties. The District Court further held that the dispute between the parties is a minor dispute within the meaning of the Railway Labor Act (Appendix in the Court of Appeals, pp. 98-99).

Obviously this was *not* a finding of fact but, instead, a conclusion of law by the District Court.

So far as the Court of Appeals is concerned, its opinion stated:

> "The contested issue which emerges from defendants'

> appeal is whether on the unassailed findings of fact the court erred in concluding that the dispute over which a strike was threatened is a 'minor dispute'? * * *" (Petitioners' Petition For a Writ of Certiorari in this Court, p. 16).

Again, the Court of Appeals declared:

> "But we are of the opinion that the District Court did not err in concluding that the threatened strike was over a minor dispute. * * *" (Petitioners' Petition for a Writ of Certiorari in this Court, p. 18).

The case cited by the respondent, *Graver Tank & Mfg. Co. v. Linde Air Prod. Co.*, 336 U. S. 271, at page 275, refers to the rule which "requires that an appellate court make allowance for the advantages possessed by the trial court in appraising the significance of conflicting testimony and reverse only 'clearly erroneous' findings." In the present case there was no "conflicting testimony" and there was no dispute as to the facts.

The present petition for a writ of certiorari questions conclusions of law reached by the lower courts on undisputed testimony.

Finally, the respondent would have this Court believe that the collective bargaining was limited to whether the carrier should accept the language contained in the Section 6 Notice. As the respondent states at page 3 of its brief:

> "Conductors did not withdraw the proposal and the parties continued to confer and negotiate concerning the offer contained in the Section 6 Notice dated August 15, 1959."

The District Court made this finding of fact:

> "The *subject matter* of the Section 6 notice was discussed in detail by officers of the Conductors with the plaintiff carrier in April 1959 and thereafter." (Appendix in the Court of Appeals, p. 91) (Italics supplied).

The all-important facts on which this petition is based are these:

1. The language of the new contract provision contained in the Section 6 notice meant one thing to the employees who proposed it and another thing to the carrier.

2. The carrier's purported acceptance of this language did not settle the subject-matter of the dispute.

These facts were not and are not contested. The question presented is whether, as a matter of law, in collective bargaining under the Railway Labor Act the words of proposed contract changes are a thing apart from the meaning of those words in the minds of the parties as declared by them during negotiations, so that the parties may make binding contract changes without having achieved any meeting of the minds as to settlement of the subject matter of the dispute.

The decision below, in that it holds that words can be thus divorced from their declared meaning in collective bargaining under the Railway Labor Act, should be reviewed.

Respectfully submitted,

BURKE WILLIAMSON,
JACK A. WILLIAMSON,
39 South La Salle Street,
Chicago 3, Illinois;
Attorneys for Petitioners.

HARRY WILMARTH,
1120 Merchants National Bank
Building,
Cedar Rapids, Iowa;
Of Counsel.

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